

12.0 REINITIATION OF CONSULTATION

12.1 GENERAL CONSIDERATIONS

Consultation must be reinitiated if the amount or extent of taking specified in the incidental take statement is exceeded or is expected to be exceeded; if new information reveals effects of the action that may affect listed species in a way not previously considered; if the action is modified in a way that causes an effect on listed species that was not previously considered; or if a new species is listed or critical habitat is designated that may be affected by the action (50 C.F.R. Section 402.16).

These general conditions apply as well to prospective agreements, plans, and contracts that the Action Agencies use to plan for operation of, or to actually operate, the FCRPS and USBR projects and to coordinate operations with Canada and regional utilities. Examples include implementation of the Columbia River Treaty between the United States and Canada, such as adopting assured operating plans and detailed operating plans; arranging with Canada for release of non-Treaty storage; and renewing and revising the Pacific Northwest Coordination Agreement.

To the extent that prospective agreements are used to achieve operations that are in accordance with this Opinion, including its terms and conditions, the effects of those prospective agreements on listed fish have been considered in this Opinion. To the extent that proposed agreements impact FCRPS or USBR operations that affect listed fish in ways not considered in this Opinion or have provisions that go beyond implementing the operations specified in the Opinion, those proposed actions may require separate consultation or reinitiation of this consultation.

12.2 COMPREHENSIVE EVALUATIONS AND PERFORMANCE STANDARDS

In addition to the general conditions described above, this Opinion compares the Action Agencies' performance with the performance standards described in Section 6.2.3. For 2007 and again for 2010, the Action Agencies will report on their cumulative progress in achieving all of these standards.

If NOAA Fisheries determines that the Action Agencies' performance does not meet these standards, NOAA Fisheries will evaluate whether supplemental consultation or reinitiation of this consultation will be recommended. Factors to consider in this decision include evaluating whether the Action Agencies have adequately adjusted their next implementation plan to meet the standard within the expectations of this consultation, whether a shortcoming in one performance standard is balanced by their exceeding expectations in another, the significance of not meeting the standard, and the effect of not meeting the standard on the regulatory reasons for reinitiation of consultation. As part of this review, NOAA Fisheries would consider the following information pertaining to performance (sections 12.2.1 through 12.2.3) in deciding whether to recommend supplemental consultation or reinitiation of consultation.

12.2.1 Hydro Operations Juvenile Performance Standard for Comprehensive Evaluations

In response to the Action Agencies' 2007 progress report, NOAA Fisheries will determine whether empirically estimated in-river survival rates, coupled with updated model analyses that include transport survival, result in system survival rates in 2005-2007 for yearling chinook and steelhead ESUs that equal or exceed the system survival rates displayed in Table 6.5. Empirically estimated in-river survival rates in 2005-2006 will be coupled with updated model analyses to derive estimates of system survival to Bonneville Dam (excluding "D") for subyearling chinook ESUs. The mean and annual estimates for available years will be compared to the mean and range of estimates (for comparable water years) in Table 6.5. In response to the Action Agencies' 2010 progress report, the same approach, comparing them with system survival mean and range of estimates (for comparable water years) in Table 6.5, will be used to estimate system survival rates in 2005-2009 for all ESUs. Additionally, NOAA Fisheries will compare the system survival rates in 2010 for yearling chinook and steelhead ESUs to the system survival mean and range of estimates (for comparable water years) in Table 6.6.

In addition, as part of the 2007 and 2010 reviews, the Action Agencies and NOAA Fisheries will consider new scientific information on juvenile survival. NOAA Fisheries will review the relevance of that information to the estimated survival for the Proposed Action and the reference operation in this Opinion. If NOAA Fisheries concludes that these system survival rates do not equal or exceed the expected juvenile system survival rates, NOAA Fisheries would conclude that the Hydro Operations Juvenile Performance Standard for the Comprehensive Evaluation would not be met.

12.2.2 Hydro Operations Adult Performance Standard for Comprehensive Evaluations

In December 2007 and December 2010, NOAA Fisheries will determine whether adult survival rates for each ESU in 2005-2007 and 2005-2009, respectively, continue to equal or exceed the mean rates displayed in Table 6.4. The mean and annual estimates for available years will be compared to the mean and range of estimates (for comparable water years) in Table 6.4.

In addition, as part of the 2007 and 2010 reviews, the Action Agencies and NOAA Fisheries will consider new scientific information on adult survival. NOAA Fisheries will review the relevance of that information to the estimated survival for the Proposed Action and the reference operation in this Opinion. If NOAA Fisheries concludes that the empirically derived survival rates for the applicable years are not continuing to equal or exceed the expected adult survival rates (Table 6.4), NOAA Fisheries would conclude that the Hydro Operations Adult Performance Standard for the Comprehensive Evaluations would not be met.

12.2.3 Non-Hydro Performance Standards

For some ESUs, the FCRPS hydro performance standards described in Tables 6.4, 6.5, and 6.6 were not sufficient to avoid jeopardy without additional non-hydro improvements.

12.2.3.1 Tributary and Estuary Habitat Offsets

In response to the Action Agencies' 2007 and 2010 progress reports, NOAA Fisheries will evaluate the magnitude of improvements that have been achieved by determining whether implementation of tributary habitat actions results in equaling or exceeding the three- and six-year metric goals identified for the specific UCR ESU. Similarly, NOAA Fisheries will evaluate whether the proposed estuary restoration actions are being implemented, as identified by the Proposed Action under Estuary Habitat Actions. If NOAA Fisheries concludes that metric goals and estuary projects have not been achieved, NOAA Fisheries would conclude that the tributary or estuary habitat performance measures would not be met.

12.2.3.2 RME

In response to the Action Agencies' 2007 and 2010 progress reports, NOAA Fisheries will determine whether the RM&E program has been implemented in accordance with the commitments described in the Proposed Action. If NOAA Fisheries concludes that RM&E program elements have not been fully established and implemented as expected, NOAA Fisheries would conclude that the RM&E necessary to support performance would not be met.

12.2.3.3 Terns

In response to the 2007 and 2010 reports, NOAA Fisheries will consider the status of implementation actions for estuary Caspian tern redistribution identified in the UPA relative to anticipated benefits of those actions assumed in this Opinion. If NOAA Fisheries concludes that East Sand Island tern predation rates are greater than those anticipated in Appendix E of this Opinion in December 2010, NOAA Fisheries would conclude that the tern predation performance measure would not be met.

12.2.3.4 Northern Pikeminnow Management Program

The Action Agencies have proposed a program that will achieve a range of annual exploitation rates of 14% to 16 % of the targeted size class (greater than or equal to 200 mm). In December 2007 and December 2010, NOAA Fisheries will determine whether the Action Agencies have achieved an average annual exploitation rate over the applicable years of at least 15% for the targeted size class. If the average exploitation rate over the applicable years is less than 15%, NOAA Fisheries would conclude that this performance standard would not be met.

12.2.3.5 Snake River Sockeye Salmon Artificial Propagation Program

The Action Agencies have proposed a program that will expand the current captive brood stock safety-net program to include development of artificial propagation facilities to produce up to 150,000 smolts for release into Idaho's Sawtooth Valley. In December, 2008 NOAA Fisheries will determine whether the Action Agencies have achieved a 150,000 smolt release into the Sawtooth Valley lakes. By December, 2010 Bonneville will work with NOAA Fisheries and the State and Tribal Fishery managers to assist in development of reasonable measures to assure adequate adult returns to the Sawtooth Valley from the 150,000 smolt program. NOAA Fisheries

would conclude that this performance standard would not be met if fewer than approximately 150,000 sockeye salmon smolts are annually released in 2008 or subsequent years.

12.2.3.6 Snake River Fall Chinook Salmon Artificial Propagation Program

The Action Agencies have proposed to continue operating the Nez Perce Tribal hatchery fall chinook program and update adult salmon and steelhead collection facilities at Lower Granite Dam. Adult collection facilities at Lower Granite Dam support brood stock collection for the hatchery program, remove of out of basin strays, support research, and improve accuracy of monitoring ESU status. In December, 2005 and 2006 NOAA Fisheries will determine whether the Lower Granite adult trap has been operated at current capacity. In December, 2006 NOAA Fisheries will determine whether the Lower Granite Trap has been improved to allow collection of approximately 6,000 adult fall chinook salmon (or approximately 30% of the run). Beginning in December, 2007 NOAA Fisheries will determine whether the Lower Granite Adult trap is being operated to collect up to 6,000 adults or approximately 30% of the run. NOAA Fisheries would conclude that this performance standard was not met if the Lower Granite adult trap was operated below current capacity in 2005 and 2006, adult trap was not improved in 2006, and trap was not operated to annually handle up to 6,000 fall chinook salmon adults by 2007.

12.4 SUPPLEMENTAL CONSULTATIONS

The proposed action in this Opinion anticipates specific projects to provide non-hydro mitigation. Details of those projects will be provided in the annual plans described in Section 6.2.3. When the details are available, formal or informal supplemental consultation may be necessary to consider the effects of those projects and, if appropriate, authorize any incidental take.

In addition, the USBR and NOAA Fisheries are engaged in supplemental consultations concerning certain of its irrigation projects that may have local effects on listed species. NOAA Fisheries' consideration of additional information from these consultations may necessitate formal or informal supplemental consultation.